

App. No. _____

IN THE
Supreme Court of the United States

TRAVIS WILLIAMS,
Petitioner,
v.

STATE OF MISSOURI,
Respondent.

**On Petition for a Writ of Certiorari
To the Supreme Court of Missouri**

**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

William J. Swift,
Counsel of Record
Office of the Missouri State Public
Defender
Woodrail Centre
1000 W. Nifong
Building 7, Suite 100
Columbia, Mo 65203
(573) 777-9977
william.swift@mspd.mo.gov

**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR WRIT OF CERTIORARI**

To: The Honorable Neil M. Gorsuch, Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Petitioner Travis Williams requests an extension of thirty (30) days in which to file his petition for writ of certiorari challenging the Missouri Supreme Court's judgment affirming his conviction for three counts of statutory sodomy involving M.E.E. and alleged to have occurred between March, 2008 and September, 2013.

1. On May 1, 2018, the Missouri Supreme Court affirmed petitioner's convictions for three counts of hand to genital statutory sodomy. A copy of that opinion accompanies this Application for an extension of time. *See*, Appendix A-1 – A-15.

2. On July 3, 2018, the Missouri Supreme Court denied petitioner's motion for rehearing. *See*, Appendix A-16. Petitioner's petition for certiorari is therefore presently due October 1, 2018. Petitioner is filing this Application at least ten days before the petition for certiorari is due to be filed. *See*, S.Ct. Rule 13.5. This Court would have jurisdiction of this case pursuant to 28 U.S.C. §1257(a).

3. At petitioner's trial, the jury repeatedly heard that petitioner had pled guilty in 1996 to hand to genital statutory sodomy involving a complainant different from the one involved in the offense at issue here. The jury was told that it could consider that prior conviction as evidence petitioner had acted in accordance with his propensity to commit sexual offenses involving a child in the present matter and to convict him of the present charge based on that propensity.

4. The Missouri Supreme Court had long recognized that evidence of a defendant's prior sexual misconduct was inadmissible for the sole purpose of showing the defendant's propensity to commit the sexual act for which he was on trial. *See, e.g., State v. Bernard*, 849 S.W.2d 10, 13 (Mo. banc 1993); *State v. Burns*, 978 S.W.2d 759, 760-61 (Mo. banc 1998); *State v. Ellison*, 239 S.W.3d 603, 605-08 (Mo. banc 2007).

5. Commencing on December 4, 2014, the Missouri Constitution was amended to provide in Mo. Const. Art. I §18(c) (emphasis added) :

Notwithstanding the provisions of sections 17 and 18(a) of this article to the contrary, in prosecutions for crimes of a sexual nature involving a victim under eighteen years of age, relevant evidence of prior criminal acts, whether charged or uncharged, is admissible for the purpose of corroborating the victim's testimony or **demonstrating the defendant's propensity to commit the crime with which he or she is presently charged.** The court may exclude relevant evidence of prior criminal acts if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

6. On appeal, petitioner urged that this Court has long prohibited propensity evidence to show that as to a present charge the defendant had acted in accordance with his propensity because such evidence violates a defendant's right to due process. *See, e.g., Boyd v. U.S.*, 142 U.S. 450, 454-58 (1892); *Brinegar v. U.S.*, 338 U.S. 160, 161-62 (1949); and *Old Chief v. U.S.*, 519 U.S. 172, 174-75 (1997). The Missouri Supreme rejected those arguments maintaining that other states and the Federal Courts of Appeal

have sanctioned the use of propensity evidence to show a defendant acted in accordance with his propensity in child sex offenses.

7. This case is a serious candidate for granting certiorari review because sanctioning propensity evidence as proof a defendant committed a child sex offense is a significant break from this Court's history of prohibiting propensity evidence to show a defendant acted in accordance with his propensity. *See, Boyd, Brinegar, and Old Chief.*

8. This application is not filed for purposes of delay. Undersigned counsel works for the Missouri Public Defender Central Appellate Office maintaining a significant capital postconviction appeal caseload as well as providing direct and postconviction appellate representation in non-capital cases.

9. For all the noted reasons, Petitioner respectfully requests the entry of an order granting a thirty (30) day extension until October 31, 2018.

SUBMITTED this 21st day of August, 2018.

Respectfully submitted,

/s/ William J. Swift
William J. Swift,
Counsel of Record
Office of the Missouri State Public
Defender
Woodrail Centre
1000 W. Nifong
Building 7, Suite 100
Columbia, Mo 65203
(573) 777-9977
william.swift@mspd.mo.gov